

March 21, 2016
6:00 P.M.
Newport, Oregon

CITY COUNCIL MEETING MINUTES

ROLL CALL

The Newport City Council met on the above date in the Council Chambers of the Newport City Hall. On roll call, Allen, Busby, Roumagoux, Swanson, and Saelens were present. Sawyer and Engler were excused.

Staff in attendance were: Spencer Nebel, City Manager, Peggy Hawker, City Recorder/Special Projects Director, Steven Rich, City Attorney, Derrick Tokos, Community Development Director, Tim Gross, Public Works Director, and Mark Miranda, Police Chief.

PLEDGE OF ALLEGIANCE

Members of the City Council, audience, and staff participated in the Pledge of Allegiance.

CONSENT CALENDAR

The consent calendar consisted of the following items:

- A. Approval of minutes of the joint meeting of the City Council, Urban Renewal Agency, and Audit Committee meeting of March 7, 2016.
- B. Request to excuse the City Manager from the July 18, 2016 City Council meeting.

MOTION was made by Swanson, seconded by Busby, to approve the consent calendar as presented. The motion carried unanimously in a voice vote.

PUBLIC HEARING

Public Hearing on the Consideration and Possible Adoption of City Council Goals for the 2016/2017 Fiscal Year. Hawker introduced the agenda item. Nebel reported that on February 23, the City Council met to hear reports from the city departments on departmental goals for the 2016/2017 Fiscal Year, and to identify Council goals for the next fiscal year. He stated that with Council's direction to conduct a long-term community visioning project during the 2016/2017 Fiscal Year, the goal setting process will see some significant changes in future years. He noted that he hopes and expects that the visioning process will develop a framework for Council to consider adopting longer term goals that would be tied to various aspects of the overall vision for the greater Newport area.

Nebel reported that the Council Goals include the status of the 2015/2016 Council goals indicating whether they are either ongoing, completed, or dropped, and these

are followed by the draft 2016/2017 Council goals which were established at the work session on February 23. He stated that throughout the course of the day, many different ideas and concepts were written down by Councilors as part of the overall presentations from departments; reviewing previous planning efforts; and including issues of importance to Councilors. He added that those items were then categorized and prioritized by the City Council. He noted that items prioritized by three or more Councilors have been included with the report contained in the packet. He stated that Council also reviewed a number of items that the city previously committed itself to for inclusion in the goals. He stated that these are listed by consensus in the report with a "(C)." He noted that the goals are included to recognize other significant efforts that staff will be working on through the course of the year.

Nebel reported that at the March 7 Council meeting, a public hearing, on the proposed 2016/2017 Fiscal Year goals, was scheduled for the March 21 City Council meeting. He noted that the draft report was also sent to the various boards and committees for their review with a request that they forward any comments prior to the March 21 meeting. He stated that he included the comments received to date in the Council packet, and that several other comments are available this evening.

Roumagoux opened the public hearing on the proposed 2016/2017 Fiscal Year goals at 6:05 P.M. She called for public comment.

Nyla Jebousek recommended that the city focus on promoting the Yaquina Bay State Park in a manner similar to what is done at Shore Acres State Park during the holiday season. She stated that the Shore Acres event draws 55,000 visitors per season, and that the City of Newport could benefit from that level of tourist activity at that time of year. She noted that she addressed the Destination Newport Committee on this suggestion, and added that she would like to see this Committee focus more on events to draw visitors to the city.

There was no other public comment, and Roumagoux closed the public hearing at 6:08 P.M. for Council deliberation.

Allen stated that Jebousek had made this suggestion last year. He added that he believed that staff was going to look into it, and asked whether this had occurred. Nebel reported that he had asked the Destination Newport Committee to discuss the idea, and added that he could refer the matter back to the DNC to further discuss the issue and report on it. Busby stated that he supports Jebousek's idea.

Busby requested that the goals of the Public Arts Committee be incorporated into the City Council goals. He read the Public Arts Committee goals into the record. MOTION was made by Busby, seconded by Saelens, to incorporate the Public Arts Committee goals into the City Council goals for the 2016/2017 Fiscal Year. The motion carried unanimously in a voice vote.

Swanson reported that the Senior Center Advisory Board had developed goals in response to Nebel's request of committees. She stated that these goals included ADA cut-outs in front of the 60+ Activity Center, and increasing paid staff so that the Center is always staffed when it is open for events. Gross reported that the ADA cut-outs would be installed in the very near future. Allen stated that he would want to hear from Nebel regarding the increase in staff time.

Swanson reported that the City Center Newport Association had a goal of moving the clock tower to the northwest corner of Highway 101 and Hurbert Street. Nebel reported that this issue is being worked on. Swanson noted that even if the clock tower

does not move; the clock is not working. Hawker reported that the parts to repair the clock had been ordered.

MOTION was made by Swanson, seconded by Busby, to adopt the 2016/2017 City Council Goals as amended this evening. The motion carried unanimously in a voice vote.

COMMUNICATIONS

Communication from Bret Fox Regarding the Farmer's Market Location. Hawker introduced the agenda item. Roumagoux apologized to Fox for the short notice that he received regarding the last meeting on this topic. She stated that these are public meetings; noted that protocol needed to be followed; and asked that the audience refrain from comments and applause unless called upon.

Nebel reported that over the past months, there have been numerous discussions and options discussed with the Farmer's Market and business owners regarding the location of the 2016 Farmer's Market. He stated that on March 7, a report was forwarded to the City Council on this issue. He noted that as was indicated in that report, several locations have been evaluated for the possible location of the 2016 Market. He added that prior to issuing a Special Event Permit for the Market, the issue of location needed to be resolved. He stated that after presentation from Market stakeholders, citizens, and business interests, Council approved the following motion: "Approve the yellow area as defined on the map for Farmer's Market for the coming year with the stipulation that the Farmer's Market reimburse the cost of a uniformed guard to those merchants who occupy the property to the north, and that City Council review the situation at the second meeting in June."

Nebel reported that as a result of this action, these items need to be incorporated into the Farmer's Market special event permit application for review and approval by the City Manager pursuant to Chapter 9.80 of the Municipal Code. He stated that the Farmer's Market special event permit has not been issued as of this date.

Nebel reported that Bret Fox has requested time tonight to address Council on its decision to allow the Farmer's Market to continue to operate in the right-of-way adjacent to his property, and has submitted a letter from his attorney, Michael Robinson, outlining concerns they have with the process and criteria the city is using to permit the Farmer's Market. He stated that specifically, Robinson asserts that a land use decision-making process must be followed because of the significant impact that the Market has on his client's property, and because he believes that the city's codes for approving special events fits within the statutory definition of a land use decision.

Nebel reported that while he does not necessarily agree with arguments raised in Robinson's letter, the fact that Fox went to the effort of retaining an attorney to outline his concerns speaks to how seriously he views the situation. He stated that after hearing comment, Council may elect to take no further action, or reaffirm its desire that the city issue a special event permit to the Farmer's Market in the "yellow area." He noted that the Market will need to provide a complete application addressing issues raised on March 7. He stated that he would then proceed with reviewing and issuing the permit, provided that the application meets the requirements of Chapter 9.80 of the Municipal Code. He noted that if this occurs, there is a legitimate risk that the city's decision will be challenged at either the Land Use Board of Appeals or Circuit Court. He added that it is

unlikely that such a challenge would be resolved in time for the Farmer's Market to open at this location as scheduled. He noted that this same timing issue exists if the city were to elect to take the Farmer's Market proposal through a land use decision-making process, as such a process requires advance notice to neighboring property owners and a written decision with findings of fact that is appealable.

Nebel reported that alternatively, Council may want to consider a motion advising that it wants the Farmer's Market to provide a complete special event permit application for the "blue area" discussed at the March 7 meeting. He stated that it is his understanding that Market representatives have met with the neighboring property owners and that none of them believe that the Market would significantly impact them. He added that concerns were raised about the adequacy of accessible parking, and that he will provide additional information addressing that issue.

Bret Fox, owner of the strip mall where the Antique Mall and Big Five Sporting Goods is located, stated that he is disappointed that he could not attend the meeting two weeks ago. He reported that he had requested an appearance before Council because last summer's Market location caused serious problems for the tenants of his shopping center. He added that the center suffered through last summer with the Market trying to resolve the issues, but in the end, there was not a satisfactory solution. He reiterated that the shopping center and the individual tenants were hurt throughout the entire summer. He stated that he supports the Market, and in the past had allowed the Market to use other property that he owns free of charge. He added that he has been supportive of the city in other ways, noting that he currently owns the property between City Hall and Walgreens, and that he allows the swimming pool contractor to park machinery on this property. He stated that he is willing to accommodate and help in this process. He added that this Walgreens is different from any others that he has developed in that the city, and community members, wanted the building to be designed in an Art Deco style, and that he incorporated Art Deco elements into the design. He stated that he, and the other owners, want to support the community and believe that the Market adds flavor and personality to the city, but does not believe that this should be at his expense. Fox cited traffic, safety, parking, and trespassing problems at his shopping center last summer. He noted that in the emotion of the last Council meeting, Council did not fully evaluate alternate locations. He reported that the economy for a lot of retailers is not great, and cited that the auto parts store, located in his mall, got a new local competitor last year. He stated that the Dollar Tree sales are down; the Saturday sales at the Big Five Sporting Goods were down; and he can only attribute the loss of sales to the location of the Market. He reiterated that this is a tough market, and his tenants do not need other challenges for their businesses to succeed. He noted that the Antique Mall had a tough year last year, and added that he does not know how many difficult years this business can weather. He reported that he is not asking the city to help; rather that he is asking the city not to hinder his ability to function and have good businesses as part of the city.

Fox stated that he believes that the Market has tremendous support. He stated that there was some concern when the Market had to move to the west side of highway. He added that if the Market moves one block south, it will still have tremendous support. He noted that evidence shows that the support will follow them. He stated that he cannot move the shopping center. He added that he had offered to try to help and support the Market, noting that there has to be a Market location that does not hurt his property. He

stated that he and his tenants have done their share, and that it is unfair to put up with the same problems as last summer. He added that it is time for someone else to help the Market find a location that does not harm businesses. He stated that he is looking for a win/win for everyone, but that it should not be at his, and his tenants, expense. He requested Council thoroughly evaluate the situation, and supported Nebel's suggestion that the Market move one block south. He added that he does not understand how one block would have a dramatic effect on the Market's success this year, and noted that the current location does have a negative effect on his shopping center.

Busby stated that he has heard about the detrimental economic effect that the Market location has had on the tenants of the shopping center, and asked whether Fox would be willing to provide documentation showing the negative economic effect on the center's tenants. Fox reported that he would not be able to get this information from some of the tenants. Busby stated that he cannot believe Fox would go forward without evidence to substantiate his position. Fox stated that he is getting a lot of pressure from tenants, and is doing his best to follow through with their wishes. Fox noted that there are well-documented problems with the parking lot. He added that the presence of security guards would not help sales. He stated that he would continue to do whatever he can to object to the Market's location next to his property. Busby asked whether he would file a LUBA complaint, and Fox reported that he would appeal the city's decision to allow the Market to locate at the 2015 location. He added that he would not hire an attorney if there was not a serious problem.

Kurt Gehlken, Vice-President of the Farmer's Market, reported that the Board of Directors has had lengthy discussions, and tried to promote a friendly environment at the Market. He added that unfortunately, a friendly environment is impossible in the yellow area. He noted that even though there will be a potential loss of business, and a financial burden to move, that the Market is willing to move into the blue area that the City Manager has recommended because the Market does not want to burden the city. He stated that to move into the blue area, the Market would like the city to paint a crosswalk on Second Street and repair the potholes on Lee Street. He reiterated that it will be an expense to the Market to move, and it takes time to get advertising out, notify vendors, etc., but the Market is willing to accept the blue zone.

Nyla Jebousek read prepared comments into the record regarding a potential LUBA appeal. She also addressed the matter of whether this decision is a land use issue; the lack of evidence of an actual loss of income to mall tenants; the ample supply of parking at the Lincoln County lot; the lack of evidence of a traffic circulation problem; and the blocking of access to the Lincoln County Law Library.

Allen stated that Fox' attorney works with a highly-regarded law firm, and that quite a bit of time was spent on the letter. He added that he is glad that Busby asked Fox whether he is willing to take this issue to the next level. He reported that this is so late in the process, that a challenge to the yellow area could stop the Market from happening. He added that if this decision was made last fall, there would be time to get it sorted out, but at this point, it is too late in the game for a legal challenge. He noted that when a LUBA filing is made, LUBA decides whether it is a land use issue and whether they have jurisdiction. He added that if LUBA does not have jurisdiction, there is still the possibility of a writ of review in the Circuit Court. He noted that in a writ of review, there is some risk and liability that the local government may have to pay the attorney fees for both sides.

Rich stated that he would echo Allen's comments, adding that it is unknown, if further action was taken, whether the city would prevail, but that the Market season would be over. He suggested finding an alternative and moving forward.

Saelens stated that at the last meeting, he did not feel that there was a lot of compromise in the room. He noted that there are obviously concerned business owners who feel so impacted that they are willing to spend money and time to take this issue to the next step to protect their interests. He added that the Farmer's Market has offered a compromise. He suggested arriving at an agreement this evening and starting the process earlier next year.

MOTION was made by Allen, seconded by Saelens, to reconsider the Council decision from the March 7, 2016 meeting at which Council endorsed the "yellow" area as a location for the 2016 Farmer's Market.

MOTION was made by Allen, seconded by Saelens, to authorize the City Manager to work with Farmer's Market representative to submit a special event permit application for the 2016 Farmer's Market at the site designated as the "blue" area, as noted in the City Council packet, and which would in effect require the closure of SW Lee Street and Seventh Street, and to authorize staff to work with Farmer's Market representatives to consider the stipulations presented by the Farmer's Market, relative to the "blue" area," in painting a crosswalk and repairing potholes on Lee Street. The motion carried unanimously in a voice vote.

Busby asked how much trouble it would be to paint a crosswalk. Gross stated that he was not in favor of a mid-block crossing, but that a crossing could likely be painted in the general area.

Kelly Greer, Farmer's Market Manager, suggested closing Hurbert Street. Nebel noted that no through traffic barricades would be placed at the Hurbert Street intersection.

From C2C Partnership - Dr. Richard Beemer - Regarding the Status of the Corvallis to Sea Trail. Hawker introduced the agenda item. Nebel reported that since the mid-1970's, there has been the concept of developing a trail through the Siuslaw National Forest from the Willamette Valley to the Oregon coast. He stated that there were several distinct efforts to address the challenges of finding a route for a trail that would cross both national forest property as well as private timber lands and other properties.

Nebel reported that the current effort dates back to March 2003 when the Corvallis-to-the-Sea-Trail Partnership was established. He stated that since this time, the C2C Partnership has been working to diligently to build this trail system. He added that Dr. Richard Beemer has been a member of this group for many years and will give an update on the status of the Corvallis to Sea Trail.

Beemer, distributed a handout, and addressed Council regarding the efforts of the group to acquire the appropriate property and complete the trail. He reported that the C2C Trail received approval, last week, from the Siuslaw National Forest, for traveling through forest property between Philomath and Harlan. He reported that June 4 is National Trail Day, and the goal date for the opening of the C2C Trail. He added that only one section of trail is having to be built, as most of the trail uses abandoned roads, etc. He stated that Derek Chapman will speak on the trail at the April 15 Chamber luncheon. He added that the bad news is that from Harlan west, the planned route passes through a great deal of Siuslaw National Forest land, some of which contains

nesting sites for the Spotted Owl and the Marbled Murrelet. Beemer reported that the good news for bike riders is that once you get to Harlan, you can go to the coast on public roads without anyone's permission. He described the route, and further detailed efforts to complete the trail. Swanson expressed concern regarding pedestrians in a bicycling environment. Beemer noted that there would be very few trail users, and they would have good trail usage manners. Beemer talked about erosion control materials; the clearing of foliage; and signage and maps.

Request from the Newport Senior Citizens Advisory Committee to Change the Name of the Newport Senior Advisory Committee to the Newport 60+ Committee. Hawker introduced the agenda item. Nebel reported that the Senior Citizens Advisory Committee has requested that Council consider formally changing the name of the committee to the 60+ Advisory Committee. He stated that this would be consistent with the renaming of the 60+ Activity Center that was done in 2015. He noted that if Council wishes to change the name of the advisory committee, this will need to be done by ordinance amending 2.05.050 of the City Municipal Code.

Peggy O'Callaghan, 60+ Activity Center Director, and Mike Rickus, Senior Citizens Advisory Committee member, appeared before Council regarding the name change request. O'Callaghan presented a video regarding 60+ Activity Center activities and events.

MOTION was made by Saelens, seconded by Swanson, to concur with the Senior Citizen Advisory Committee to rename the Senior Citizen Advisory Committee to the Newport 60+ Advisory Committee, and direct city administration to prepare an ordinance for Council to review and approve this change. The motion carried unanimously in a voice vote.

CITY MANAGER'S REPORT

Consideration and Possible Adoption of Resolution No. 3744, a Resolution Authorizing an Application for FEMA Hazard Mitigation Grant Funds to Acquire, from Willing Sellers, Residential Property along NE 70th Drive, Impacted by the Landslide that Occurred as a Result of the December 2015 Storms. Hawker introduced the agenda item. Nebel reported that as a result of significant weather events in December, a landslide occurred on NE 70th Drive which threatened seven residential properties. He stated that three of those properties have been red tagged, meaning they are unsafe to occupy or enter, and those residences are located at 380, 384, and 392 NE 70th Drive. He added that four other homes have restricted use and have been yellow tagged to allow owners to access the units but not reside in them overnight.

Nebel reported that the proposed grant would allow the city to acquire these seven properties to mitigate the potential future loss of property and life at this location. He stated that the maximum that FEMA will pay to acquire these types of properties is 75% of the properties pre-disaster assessed valuation. He noted that once the property is acquired, the city would be responsible for removing the structures with the property remaining open space once the structures are removed. He added that the city owns the property below the lots that would be acquired with these grant funds.

Nebel reported that these mitigation funds became available as a result of the major disaster declaration by FEMA on February 19, 2016. He stated that the mitigation funds

are limited to \$3.5 million in the state, so this grant application will be competing with other applications in those counties that were included in the emergency declaration. Nebel and Tokos responded to Council questions.

MOTION was made by Swanson, seconded by Saelens, to adopt Resolution 3744, a resolution authorizing the submittal of an application for FEMA Hazard Mitigation Grant Funds to acquire from willing sellers, residential property along the Northeast 70th side impacted by the landslide that occurred as a result of the December 2015 storms. The motion carried unanimously in a voice vote.

REPORT FROM MAYOR AND COUNCIL

Roumagoux reported that she met, on March 9, with Kevin Raichl who is creating the video, "Ebb and Flow," based on the history of Newport.

Roumagoux reported that, on March 10, she delivered the welcome address at Kurt Schrader's Town Hall meeting, and drew speaker tickets. She noted that Schrader's main message was that there was actually a lot of legislation that was passed.

Roumagoux reported that, on March 11, she attended the opening of Joyce Gaffin's art exhibit at the Pacific Maritime Heritage Museum. She noted that it is a beautiful exhibit.

Roumagoux reported that, on March 13, she attended OMSI's Camp Gray opening in the afternoon, and the dinner later that evening. She noted that Nancy Stuber, from OMSI, commended Tokos for his help with this project.

Roumagoux reported that, on March 13, she met with Maryann Bozza and Bob Cowen, from the Hatfield Marine Science Center, to plan an art exhibit on the OSU Campus.

Roumagoux reported that, on March 14, she attended the introductory Budget Committee meeting.

Roumagoux reported that, on March 17, she attended a fundraising event for the Children's Advocacy Center which was held at the Eagles.

Roumagoux reported that, on March 18, she met with the Oregon Mayor's Association Board, which continued to refine plans for the upcoming conference which will be held at Salishan in July.

Saelens asked whether the Police Department could contact Newport Middle School regarding pedestrian safety when students are coming and going from school.

Saelens asked whether the Police Department could tighten enforcement of people ignoring stop signs.

Saelens reported that, in Eugene, if an animal is involved in a biting incident, it is required to wear an orange collar and muzzle for a year. He recommended the city consider better vicious animal enforcement.

Swanson reported that she attended Schrader's roundtable for elected officials, as well as the Town Hall meeting on the same date. She noted that they were interesting meetings.

Swanson reported that she attended the open house on the Airport Master Plan update, and was the only person, other than consultants and staff, in attendance.

Swanson reported that she attended the recent preliminary Budget Committee meeting.

Swanson reported that she attended OMSI's Camp Gray opening. She noted that the intriguing thing is that Saelens and his wife provided the benches around the fire pit which are made of various kinds of wood. She added that the benches will be labeled indicating the type of wood used for each bench.

Swanson reported that the Mombetsu Committee is in full gear preparing for the upcoming exchange. She noted that the McConnell's are handling the tree planting, plaque, banquet, reception, transportation, etc. She added that she volunteered to research the newspaper archives that could be used to commemorate the 50th Anniversary of the Sister City relationship. She stated that a Sister City flag is being designed as a part of the gift to dignitaries when they arrive. She distributed a copy of the flag, and thanked Tad Taylor, in the city's IT office, for his assistance.

Nebel reviewed upcoming commitments. He noted that the final Budget Committee meeting is scheduled for May 17, and that he is proposing a special City Council meeting on May 18, at 5:00 P.M., at which Mombetsu city officials will attend and be sworn in as official Newport citizens, for a formal recognition of the 50th anniversary of the Sister City relationship. Nebel noted that he would forward the final dates for all the events associated with this visit to the City Council.

Busby reported that he attended a recent meeting of the Public Arts Committee. He noted that the Committee established goals and is working diligently on meeting them. He stated that C J Rench, the artist creating the Aquatic Center public art, will be in town on April 28 and 29 at which time he will be working with students, the Rotary Club, and the Chamber of Commerce to promote awareness of this project and public art in general.

Busby reported that he drives down Bay Boulevard daily, and asked whether there is anything that can be done about the parking of longer vehicles that extend into the roadway. He also noted that some of the loading and unloading of trucks appears to take longer than necessary.

Allen reported that he attended his first League of Oregon Cities Board meeting as a Board Member. He noted that it was a good meeting. He stated that a discussion occurred regarding the Handy vs. Lane County public meetings issue, and the matter has been referred to the Oregon Supreme Court. He added that the LOC has filed an amicus brief in the matter.

Allen reported that he attended Schrader's Town Hall meeting and elected official's roundtable. He noted that there was a good turnout from Newport, and that Schrader took notes and asked his staff to remain in contact with Nebel regarding regional airport and other issues.

Allen reported that he attended the preliminary Budget Committee meeting and that it was informative.

Allen reported that FINE met last week, and discussions ensued on the OMSI Camp Gray and that fishermen would like to engage OMSI staff for teaching opportunities when ocean-related sessions are scheduled. Also discussed was the NNMREC funding issue and other ocean-related topics.

PUBLIC COMMENT

Marletta Noe reported that she has been trying, for years, to get something done about dangerous dogs. She related the issue of her neighbor's dangerous dog and its attack on her and her dog. She expressed frustration about unenforced leash laws.

ADJOURNMENT

Having no further business, the meeting adjourned at 8:03 P.M.

Margaret M. Hawker, City Recorder

Sandra N. Roumagoux, Mayor